

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:19-cv-00112-BO

KENNETH WASHINGTON AS PERSONAL)
REPRESENTATIVE OF THE ESTATE OF)
(BABY BOY) WASHINGTON,)

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

**UNITED STATES' MOTION TO DISMISS
FOR LACK OF SUBJECT-MATTER
JURISDICTION; 12(b)(1).**

Pursuant to Fed. R. Civ. P. 12(b)(1), the United States moves to dismiss Plaintiff Kenneth Washington's claims brought under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-2680. First, Plaintiff failed to exhaust his administrative remedies for a wrongful death claim on behalf of Baby Boy Washington. 28 U.S.C. § 2679(a). Second, Plaintiff's Second Amended Complaint has failed to allege claims that are outside of the discretionary function exception to the FTCA's waiver of sovereign immunity. 28 U.S.C. § 2680(a). Thus, the Complaint must be dismissed for lack of subject-matter jurisdiction under Fed. R. Civ. P. 12(b)(1).

In support of its motion, the Government submits the accompanying Memorandum of Law and Exhibits.

DATED: this 30th day of December, 2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2019, a copy of the foregoing document was served on all counsel of record by operation of the court's electronic filing system and can be accessed through that system.

/s/ LaCresha A. Johnson
LACRESHA A. JOHNSON